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7590	04/04/2005		EXAMINER	
Thomas S. Birney, Esq. Dorr, Carson, Sloan & Birney, P.C. 3010 East 6th Avenue Denver, CO 80206			NGUYEN, SON T	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/685,151

Filing Date: October 14, 2003

Appellant(s): ANSALDO, ALBERT A.

Thomas S. Birney
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/14/05.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 4,5,7-18 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

3195Lehman et al.	LEHMAN ET AL.	7-1965
4324Stonestreet et al.	STONESTREET ET AL.	4-1982
4997Tousignant et al.	TOUSIGNANT ET AL.	3-1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4,5,7-18 are rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 8/25/04.

(11) Response to Argument

Appellant argued that “Applicant asserts that the Office Action impermissibly used hindsight to reconstruct the claimed invention”.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For example, Lehman et al. teach a cylindrical container 20 for containing feed. Lehman et al. do not specified any further regarding critical reason why the container needs to be cylindrical or round in shape. Plainly, it's just a container to contain feed so modifying Lehman's container with Stonestreet's container does not alter the invention

of Lehman et al. container. Stonestreet et al. teach a container for containing feed, the container is collapsible by taking the panels down in pieces as shown in fig. 6. Collapsibility allows a user to be able to assemble and disassemble the container for easier storage and transport, which is old in the art. Therefore, one of ordinary skill in the art, so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, would relied on Stonestreet et al. for a teaching of a collapsible feed container to modified the container of Lehman et al. so as to allow a user to assemble and disassemble the container for easier storage and transport. This knowledge is not gleaned only from Appellant's disclosure because it is notoriously well know in the art, as demonstrated by Stonestreet et al., to employ a collapsible container in feeding system for animal to allow easier storage and transport.

Tousignant et al. teach a support structure 19 for a hopper 21, in which the structure comprises a foot stand 34. The support structure allows a user to access the top of the hopper for refilling material contained therein, which support structure is old in the art. Therefore, one of ordinary skill in the art, so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, would relied on Tousignant et al. for a teaching of a support structure that can be adjustable to modified the support structure 31 of Lehman et al. so as to allow a user access to the top of the container for refilling material contained therein and to also allow height adjustment of the whole feeder. Again, this knowledge is not gleaned only from Appellant's disclosure because it is notoriously well know in the art, as demonstrated by Tousignant et al., to employ a support structure that is adjustable in

feeding system for animal to allow a user access to the top of the container for refilling material contained therein and to also allow height adjustment of the whole feeder.

Appellant argued that “..., there must be a teaching or suggestion within the prior art itself or within the general knowledge of one skilled in the art to look to the particular sources of information and combine particular elements in the precise way the inventor combined these elements. ATD Corn. v. Lydall, Inc., 48 U.S.P.Q.2d 1321 (Fed. Cir. 1998). There is nothing in Lehman et al., Stonestreet et al., or Tousignant et al. that teaches or suggests the combination of these elements. Without this suggestion or motivation to modify or combine, the rejection is improper”.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is taught in every secondary reference as explained in the final rejection mailed 8/25/04.

For example (the motivations are underlined), Lehman et al. discloses a game feeder comprising: a feed storage container 21 having an outlet 26; a feed dispenser 35 (see also fig. 3) attachable at the outlet of the feed storage container; and a support

structure 31 detachably supporting the feed storage container above the ground and having detachable legs (col. 2, lines 43-46). However, Lehman et al. lacks a collapsible feed storage container formed from a plurality of panels that can be disassembled from one another; and a foot platform.

Stonestreet et al. teaches an animal feeder in which the feed storage container is collapsible and formed from a plurality of panels that can be disassembled from one another (see fig. 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feed storage container of Lehman et al. be collapsible as taught by Stonestreet et al. in order to allow for easier storage and transport.

Tousignant et al. teaches a support structure 19 for a hopper 21, in which the structure comprises a foot stand 34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foot stand as taught by Tousignant et al. on the support structure of Lehman et al. in order to allow a user to stand on the foot stand to fill feed into the container.

Also, the teachings from Stonestreet et al. and Tousignant et al. are notoriously well known in the art. Collapsible containers are well known to be used as demonstrated by Stonestreet et al. for ease of transport and storage. A foot stand as demonstrated by Tousignant et al. is well known to be used to allow a user to reach higher elevation and stand on the foot stand for whatever purpose he/she uses a foot stand for.

Appellant argued that “Tousignant et al. is drawn from a different field of art and is not collapsible”.

In response to applicant's argument that Tousignant et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tousignant et al. teach a support structure¹⁹ for a hopper 21, in which the structure comprises a foot stand 34. Again, a foot stand is notoriously well known to be used in a variety of application for allowing a user to reach items placed in higher elevation. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foot stand as taught by Tousignant et al. on the support structure of Lehman et al. in order to allow a user to stand on the foot stand to fill feed into the container. The analogous lies in the fact that Lehman et al. and Tousignant et al. teach a container being supported on a supporting structure. The container of Tousignant is capable or can hold feed if one wishes to put feed therein.

For the above reasons, it is believed that the rejections should be sustained.

Application/Control Number: 10/685,151
Art Unit: 3643

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Respectfully submitted,

Son T. Nguyen
Primary Examiner
Art Unit 3643

stn
March 23, 2005

Conferees

Teri Luu *T.L.*
Andrea Valenti *AV*

Thomas S. Birney, Esq.
Dorr, Carson, Sloan & Birney, P.C.
3010 East 6th Avenue
Denver, CO 80206